IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.408 of 1995
Date of decision:30.11.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

Shri Tarun sharma C/o M/s Jaidco industries, Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.
Mr. SK Mukhi, Advocate, for the assessee.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') arising out of its order dated 25.2.1994 in ITA No.825(ASR)/1993, for the assessment year 1986-87:-

> "Whether on the facts and in the circumstances of the case and in view of the assessee's statement, recorded during the course of search and seizure operation under section 132(1) in the case of father of assessee offering additional income of Rs.40,000/- on account of unexplained investment in Car/Scooter, the Tribunal is right in law in upholding the order of the Dy.CIT(A) deleting the addition of Rs.40,000/-?"

The assessee is deriving income from commission and interest. On 1.7.1987, raid was conducted at the residential premises of his father where his car was found parked. He surrendered income of Rs.35000/- which was declared as having been invested in car and scooter. A notice was issued to the assessee under section 148 of the Income Tax Act, 1961 (for short, 'the Act'), requiring a return to be filed. Though, return was filed, total income declared was Rs.16070/-. The amount surrendered at the time of search was not declared in the return. During assessment, the assessee

offered explanation for purchase of the car from other sources. The assessing officer rejected the explanation and held that the assessee concocted a story to get relief from tax liability. The assessee added a sum of Rs.40,000/- on account of unexplained investment in car and Rs.10,000/- for unexplained investment in scooter. This order was set aside by the CIT (A) with a direction to make de novo assessment. Thereafter, the Assessing Officer upheld addition to the extent of Rs.40,000/-being unexplained investment in purchase of car. This was again set aside on appeal which order was upheld by the Tribunal.

The Tribunal upheld the observation of the appellate authority that search was conducted on 1.7.1987, while the car was purchased on 25.11.1985 and therefore, addition on account of car was not justified.

We have heard learned counsel for the parties.

Learned counsel for the revenue, inspite of efforts, could not succeed in persuading this Court to take a view contrary to what has been taken by the Tribunal on appreciation of the evidence on record.

The finding recorded by the appellate authority which has been upheld by the Tribunal is a pure finding of fact and it having been held that there was no unexplained income during the relevant year, the deletion of addition cannot be held to be illegal.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 30, 2006
'gs'

(Rajesh Bindal)
Judge